IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1901.

No. 197.

THE CONSOLIDATED COAL COMPANY OF ST. LOUIS, *Plaintiff in Error.* *vs.* THE PEOPLE OF THE STATE OF ILLINOIS, *Defendant in Error.*	*In Error to the Supreme Court of Illinois.*

STATEMENT.

The statement of facts made by counsel for plaintiff in error is a fair one and clearly submits the issues here involved for the consideration of the Court. It is therefore unnecessary that an additional statement should be made.

It is insisted that the acts of the legislature of Illinois in relation to the inspection of coal

mines by State mine inspectors, and providing for the payment of fees therefor by the mine owners is repugnant to the Fourteenth Amendment to the Constitution of the United States.

Under the assignment of error counsel submits the following questions:

1. Whether the act of the legislature of Illinois in so far as it gives to district mine inspectors untrammeled discretion as to how often they will inspect, and an unregulated discretion as to what fees they will charge within the limits fixed by that act, violates the provisions of the Fourteenth Amendment to the Constitution forbidding any state to deprive any person of life, liberty, or property without due process of law, or to deny to any person within its jurisdiction the equal protection of the law.

2. Whether the original act, as amended in 1897, in so far as it discriminates as to penalties imposed upon persons engaged in the same business, and inflicts such penalties upon some and not upon others, is a legitimate exercise of police power.

3. Whether the act is an inspection law within the true meaning of that word and in that sense which is required to make it a proper police regulation.

BRIEF OF AUTHORITIES AND POINTS.

Due Process of Law.

"By the law of the land is most clearly intended the general law, which hears before it condemns; which proceeds upon inquiry and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty and property and immunities under the protection of the general rules which govern society. Every thing which may pass under the form of an enactment is not law of the land."

Brannon on the 14th Amendment, p. 140.
Dartmouth College Case, 4 Wheaton, 581.

Kent says, "The better and larger definition of due process of law is that it means law in its regular course of administration through the courts of justice."

2 Kent's Com., 13.

Equal Protection of Laws.

State legislation is not obnoxious to the provision of the Fourteenth Amendment to the Constitution of the United States if all persons subject to it are treated alike under similar

circumstances and conditions in respect both to the privileges conferred and the liabilities imposed.

6 Amer. and Eng. E. L., p. 967.

And when legislation applies to particular bodies or associations, imposing upon them additional liabilities, it is not open to the objection that it denies to them the equal protection of the laws, if all persons brought under its influence are treated alike under the same conditions.

Missouri Pac. Ry. Co. vs. Mackey, 127 U. S., 209.
Minneapolis, etc. vs. Herrick, 127 U. S., 210.
Walston vs. Nevin, 128 U. S., 578.
6 A. and E. E. L., 968.

A statute being general in its application, embracing all persons under substantially like circumstances, and not being an arbitrary exercise of power does not deny to the persons upon whom it operates the equal protection of the laws.

Loew vs. Kansas, 163 U. S., 81, 88.
Duncan vs. Missouri, 52 U. S., 377.
Jones vs. Brim, 165 U. S., 184.

Illustrations.

A municipal ordinance prohibiting washing and ironing in public laundries within defined territorial limits, from 10:00 o'clock at night to 6:00 o'clock in the morning, is a purely police regulation, within the competency of a municipality possessed of the ordinary powers. The Fourteenth Amendment to the Constitution of the United States does not impair the police power of a state.

Barber vs. Connolly, 113 U. S., 27.

A statute of a state provided that every railroad corporation owning or operating a railroad in the state, shall be responsible in damages to the owner of property injured or destroyed by fire, communicated directly or indirectly, by locomotive engines upon its railroad, and also provided that it shall have an insurable interest in the property upon the route of its railroad, and may procure insurance thereon in its own behalf. The Supreme Court of the United States, Justice GRAY, delivering the opinion of the Court, held:

> "The statute is a constitutional and valid exercise of legislative power of the state, and applies to all railroad corporations alike.

> Consequently, it neither violates any contract between the state and the railroad company, nor deprives the company of its property without due process of law, nor yet denies to it the equal protection of the laws."

St. Louis & San Francisco Ry. Co. vs. Mathews, 165 U. S., 1.

A statute of the State of Pennsylvania forbidding the manufacture and sale of oleomargarine, was held by the Supreme Court of the United States not to conflict with the Fourteenth Amendment to the Constitution. The Court says:

> "The statute places under the same restrictions, and subjects to the same burdens all who manufacture, or sell, or offer for sale, or keep in possession to sell, the articles embraced in its prohibitions, thus recognizing and preserving the principle of equality among those engaged in the same business."

Powell vs. Pennsylvania, 127 U. S. 687.

A provision of the Code of Iowa, section 1289, which authorizes the recovery of double the value of stock killed, or damages thereto, by a railroad when the injury took place at a point on the road where the corporation had a

right to erect a fence and failed to do so, when it was not occasioned by the wilful act of the owner or his agent, is not in conflict with the Fourteenth Amendment to the Constitution of the United States, either as depriving the company of property without due process of law, or as to denying to it the equal protection of the laws.

Barber vs. Connolly, 113 U. S., 27.
Missouri Pacific Ry. Co. vs. Humes, 115 U. S., 512.
Minneapolis Ry. Co. vs. Beckwith, 129 U. S., 27.

An ordinance making it unlawful to establish a public laundry without a certificate from the health officer and one from the fire wardens that the premises are in proper condition and that the business can be safely carried on with respect to the sanitary condition of the neighborhood, and prohibiting the doing of any business between the hours of 10:00 o'clock a. m. and 6:00 p. m. on Sunday, does not deny the keeper of a public laundry the equal protection of the laws.

Ex Parte Moynier, 65 Cal., 33.

Police Power of the State.

The Fourteenth Amendment to the Constitution does not limit the subjects in relation to which the power of the State may be exercised for the protection of its citizens.

Barber vs. Connolly, 113 U. S., 27.
Missouri Pacific R'y vs. Humes, 115 U. S., 512.
Minneapolis R'y Co. vs. Beckwith, 129 U. S., 27.
Powell vs. Pennsylvania, 127. U. S., 678.
St. L. & S. F. R'y Co. vs. Mathews, 165 U. S., 1.
Jones vs. Brim, 165 U. S., 180.
Davis vs. Mass., 167 U. S., 43.

Classification of Subjects of Police Power.

Classification of persons and things subject to the operation of the police power of the State is not inimical to the provisions of the Fourteenth Amendment to the Federal Constitution. While the object of the Fourteenth Amendment in respect to citizenship was to preserve equality of right and to prevent discrimination between citizens, it does not follow that because one man of one class happens to be treated by law differently from another in another class that the principle of equality is violated. It

only requires that the same means and methods be applied impartially to all the constituents of a class, so that the law shall operate equally and uniformly upon all persons in similar circumstances.

Brannon on 14th Amdt., 323.
Ky. R. R. Tax Cases, 115 U. S., 321.

The Fourteenth Amendment prescribes no rigid equality, and permits to the wisdom and discretion of the State a wide latitude as far as the interference of the Supreme Court of the United States is concerned. Nor with the impolicy of a law has that Court concern, for it is not a harbor in which can be found a refuge from ill-advised, unequal and oppressive legislation.

Mobile County vs. Kimball, 102 U. S. 691.
Railroad vs. Mackey, 127 U. S. 207.

Police Power Applicable to Regulation of Operation of Coal Mines.

The legislature has the clearest right to legislate to protect the health and lives of the many thousands, and under the principles applicable to that branch of the law there has been very little question of the validity of

legislation for the inspection and ventilation of coal mines. An act requiring coal mines to be inspected and ventilated to protect miners from the foul air and dangerous gases, and requiring the mine owners to pay the inspection fees, was held to be valid as a legitimate exercise of the police power of the State, and that such payment of inspection fees was for services beneficial to the owners of the mines.

Chicago, Etc. Co. vs. The People, 181 Ill. 270.
Consolidated Coal Co. vs. The People, 186 Ill. 134.
People vs. Harper, 91 Ill. 357.

Inspection fees to be paid by mine owners under the statutes of Illinois, are not charged for the purposes of revenue, but to cover the expenses of inspections, and the amount of such fees having been determined by the legislature, is conclusive, unless it is manifest that the real purpose is to raise revenue under the guise of police regulation or to prohibit the exercise by a citizen of a lawful calling by means of oppressive license fees.

C. W. & V. C. Co. vs. The People, 181 Ill., 275.
Price vs. The People, 193 Ill., 114.
People vs. Harper, 91 Ill., 357.

It is within the power of the legislature to vest certain officers with the power and authority to prescribe what fees shall be charged in the enforcement of an inspection law which is authorized under the police power of the state.

People vs. Harper, 91 Ill., 357.

Inspection.

Inspection is the examination of certain articles made by law subject to such examination so that they may be declared fit for commerce; an examination of an article to determine its fitness for a given purpose.

16 A. & E. E. L., 899.

Amendment of 1897.

The general purpose and object of the mine inspection law of Illinois is not in conflict with any provision of the Federal Constitution, nor is that portion of the law providing for the payment of inspection fees by mine owners repugnant to any constitutional provision, consequently, whether the amendment of 1897, by which section 11 (e) is affected, is or is not constitutional, is a wholly immaterial consideration.

Part of a statute may be unconstitutional and void and the residue constitutional and valid. The test is not whether the void and valid parts are contained in the same section, for the distribution into sections is purely artificial; but rather whether they are essentially and inseparably connected. If, when the unconstitutional portion is stricken out, that which remains is complete in itself and capable of being executed in accordance with the apparent legislative intent, it must be sustained.

23 A. & E. E. L., 225.
People vs. Cooper, 83 Ill. 584.
Heinze vs. People, 92 Ill. 406.
6 A. & E. E. L. (2d ed.), 1088.
Presser vs. Illinois, 116 U. S. 252.
Field vs. Clark, 153 U. S. 649.
C., B. & Q. R. R. Co. vs. Jones, 149 Ill. 365.
The People vs. State Reformatory, 148 Ill. 425.

If the change of the statute contemplated by the amendment to section 11 (e) is in violation of the Federal Constitution, then the proposed amendment of 1897 is void and that section remains as originally enacted.

"An unconstitutional act is not law; it confers no rights; it imposes no duties; it

affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed."

6 A. & E. E. L. (2d ed.), 1091.
Newman vs. The People, 23 Col. 300.
Gilchrest vs. Schmidling, 12 Kan. 263.

May it Please the Court:

It is contended by counsel that the act of the Legislature of Illinois providing for the inspection of coal mines by district mine inspectors and the payment of their fees by the mine owners, gives the district inspectors an "untrammeled discretion" as to how often they will inspect and an "unregulated discretion" as to what fees they will charge within the limits fixed by the statute, and that by reason thereof the statute is repugnant to the Fourteenth Amendment to the Federal Constitution as depriving mine owners of their property without due process of law, and denying to them the equal protection of the laws. We do not suppose it is seriously insisted here that under any provision of this statute now before this Honorable Court for consideration, mine

owners can be deprived of their property without due process of law. Due process of law means:

> "Law in its regular course of administration through the courts of justice,"

and it will be seen by an inspection of the provisions of this act that the fees of mine inspectors can not be collected in any other way, if resisted, than through the regular channels provided by law—through the courts of justice—as is being done in this case. We assume, therefore, that counsel relies upon the other provision of the Fourteenth Amendment, and seriously insist that this statute denies to mine owners "the equal protection of the laws." It can not be admitted, however, that this statute gives to mine inspectors an "untrammeled discretion" as to how often they will inspect, nor that it gives them an "unregulated discretion" as to what fees they will charge within the limits fixed by the statute. On the contrary the statute provides that such inspectors shall be appointed upon the recommendation of a board of examiners elected for that purpose, and certain qualifications for the office are provided by the statute; and each inspector is

required to give bond conditioned for the faithful performance of his duties in every particular as required by the provisions of the act, to be approved by the Governor of the State. Such inspectors are therefore held to a strict accountability to make inspections according to the provisions of the act, when such inspections are necessary, not fewer than four a year for each mine subject to inspection, and while discretion is necessarily vested in the inspector as to the number of inspections he shall make and of necessity some range is allowed as to the amount of fees charged for each inspection, yet his inspections are subject to control by the courts, and by the express provisions of the statute he is subject to removal from office for neglect or malfeasance in the discharge of his duty as in said act provided.

It is insisted, however, that the law makes the number of inspections entirely discretionary with the inspector and it devolves upon him the duty of classification, which the legislature ought to have performed. This position has been answered by the Supreme Court of this

State in the opinion handed down in this case, a copy of which is filed in the record, and also in the case of the *Chicago, Wilmington & Vermillion Coal Company vs. The People*, 181 Ill. 270. The very necessity for a mine inspector makes it impossible that the legislature could fix by any definite and invariable rule the number of inspections that should be made by a mine inspector. In the nature of things it cannot be known when an inspection may be necessary. This depends upon the physical conditions surrounding each and every mine. If there should be a sudden accumulation of noxious gas, or should be a falling of the roof of a mine, or by fire, or some other cause, should an escapement shaft become dangerous, an inspection would be necessary; and if any such event should happen to a mine at a time distantly removed from the time fixed by the statute for an inspection, the very object and purpose of the law would fail. Under such a statute when the greatest necessity for an inspection might arise, themine inspector would be powerless to inspect unless the emergency should happen at the time fixed by the statute for the inspection to occur. It would be entirely unreasonable to suppose that the Legislature is so limited by

constitutional provisions as to make a statute necessary. It is equally as impracticable for the legislature to provide according to any physical circumstance or artificial classification a means by which a uniform and invariable scale of inspection fees could be fixed. The amount of labor involved in the inspection of the same mine on different occasions must necessarily vary according to the circumstances surrounding the mine. One mine having a large number of employes might be so circumstanced as to involve less labor on the part of the inspector than a smaller mine with fewer employes, and on different occasions the amount of labor involved in the inspection of the same mine may vary widely, and so the legislature has wisely left the question of the amount of fees and the number of inspections to be made of each mine, in a reasonable measure within the discretion of the mine inspector. This is not an unusual provision with reference to the enforcement of police regulations, but on the contrary the same rule was adopted by the legislature in relation to the inspection of grain, it having been provided that the fees for the inspection of grain shall be regulated by the Railroad and Warehouse Commissioners,

and such a law was held valid by the Supreme Court of this State in the case of *People vs. Harper*, 91 Ill. 357.

It is contended that under the statute a mine inspector has it within his power to inspect one mine owner out of business, while another mine owner to whom he is friendly might be subjected only to the minimum number of inspections at the minimum fee fixed by the statute, without reference to the real necessities of the case, and that such a possibility renders the statute unconstitutional.

It is not questioned but what that power lies with a district mine inspector who would not hesitate to violate his oath of office and subject himself to the pains and penalties of such conduct. The same may be said of any law upon the statute books, however definite and certain it may be in all of its parts and provisions, but courts will not presume that officers who are put under the most solemn obligations for the faithful performance of their official duties, will violate the duties imposed upon them by law, in order to justify the court in holding a statute unconstitutional. Whether a law is discriminating and unconstitutional is not to

be determined by considering what may possibly be done by an illegal and unjust administration of it, but by considering whether when fairly and legally administered it will operate unequally and unjustly in contravention of some constitutional provision. All presumptions of law are in favor of the faithful and conscientious discharge of all duties of office imposed upon a particular officer; and in the enforcement of a statute, where such a discharge of official duty will not result in a violation of any provision of the Federal Constitution, the statute must be held valid without respect to what might be done in violation of its provisions.

Counsel attempts to support his argument by a citation of the case of *Stewart vs. Palmer*, 74 N. Y., 183, which he supposes to support the statement in his brief that the constitutional validity of a law is to be tested not by what has been done under it, but what may, by its authority, be done. The case of *Stewart vs. Palmer* is not at all relevant to the question here under discussion, nor does that authority support the doctrine contended for by counsel. The law complained of there was a law impos-

ing an assessment for local improvements without notice to and a hearing or an opportunity to be heard, on the part of the owner of the property to be assessed; and the Supreme Court of New York held, that such a statute would operate to deprive one of his property without due process of law. The Supreme Court used the language of counsel's brief in the opinion, but it was applied in quite a different way from what he seeks to apply that language here. There it was contended that although the statute provided for no notice to be given, that in fact notice had been given to the property owner, and the Supreme Court very properly held that the giving of a notice not required by the statute, would not cure the defect of the statute under the provisions of which it was contemplated that an assessment might be made against property for local improvements without giving any notice whatever to the property owner.

The case of the *City of Baltimore vs. Reddick*, 40 Md., 217, is relied upon as the principal authority upon which counsel bases his argument that vesting a discretion in the mine inspector as to the number of inspections he shall make

and as to the amount he shall charge for each inspection, is in violation of the Fourteenth Amendment. An examination of that case will disclose that it does not support the position of counsel. It was there held that an ordinance requiring the removal of steam engines in such cases as presented by the facts of that case, after notice from the mayor, without prescribing for their construction, regulation or use, committed to the unrestrained will of a single public officer a power over the use of steam within the limits of the city of Baltimore, practically absolute, so that he might prohibit its use altogether. It will be noted that the exercise of this power might be within the letter of the ordinance complained of; or, in other words, the ordinance *by its terms* conferred this extraordinary power upon, and left it without limitation or means of regulation in the hands of, a single individual. The Supreme Court in passing upon the question, used the language quoted in the argument of counsel for plaintiff in error; but when we consider that the exercise of absolute and arbitrary power by a district mine inspector would not only be a violation of the letter, but the spirit of the statute under which he is appointed, and would sub-

ject him to removal from office for a violation of his duties, as well as to create a liability upon his official bond, then it will be comprehended how foreign to the issue here presented is the case of *Baltimore vs. Reddick*.

The case of *Yick Wo vs. Hopkins*, 118 U. S., 356, is another case relied upon in support of the same doctrine. The case is quite as foreign to the real issue as the cases already mentioned; in that case the Supreme Court of the United States, in passing upon the question of the exercise of arbitrary power, use this language:

> "We are not able to concur in that interpretation of the power conferred upon the supervisors. There is nothing in the ordinances which points to such a regulation of the business of keeping and conducting laundries. They seem intended to confer, and actually do confer not a discretion to be exercised upon a consideration of the circumstances of each case, but a naked and arbitrary power to give or withhold consent, not only as to places, but as to persons."

Mine inspectors, under the laws of Illinois, must give consideration to the circumstances of each case, both with reference to when an inspection shall be made and what fee shall be charged therefor. So the rule laid down in the

case of *Yick Wo vs. Hopkins*, is entirely met by the provisions of this statute. However, this was a case in which two Chinamen were arrested, fine : and imprisoned in the city of San Francisco, California, for carrying on a laundry business in that city without the consent of the board of supervisors of that county, and the real ground of the decision appears on page 374, where the Court say:

> "No reason whatever, except the will of the supervisors, is assigned why they should not be permitted to carry on, in the accustomed manner, their harmless and useful occupation, on which they depend for a livelihood. And while the consent of the supervisors is withheld from them and from 200 others who have also petitioned, all of whom happen to be Chinese subjects, 80 others, not Chinese subjects, are permitted to carry on the same business under similar conditions. The fact of this discrimination is admitted. No reason for it is shown, and the conclusion can not be resisted, that no reason for it exists except hostility to the race and nationality to which the petitiners belong, and which in the eye of the law is not justified. The discrimination is, therefore, illegal, and the public administration which enforces it is a denial of the equal protection of the laws and a violation of the Fourteenth Amendment of the

> Constitution. The imprisonment of the petitioners is, therefore, illegal, and they must be discharged."

State legislation is not obnoxious to the provisions of the Fourteenth Amendment if all persons subject to it are treated alike under similar circumstances and conditions in respect both of the privileges conferred and liabilities imposed. It is not insisted that any one in the mining business is not subject to the provisions of the mining law of Illinois and all mines are equally subject to be inspected by the district mine inspector. It is true that section 11e was so amended in 1897 that under the provisions of that section the owners and operators of any mines wherein not more than five men are employed at any one time, are not subject to prosecution under the provisions of that section for failure to observe proper sanitary regulations and pay inspection fees. Counsel insists that this exception in the amendment to section 11e is not such a classification as would be recognized by the courts as rational, and that inasmuch as it takes out of the operation of the penalty of this statute persons alike situated as those left within its operation, that it amounts to a denial to those remaining sub-

ject thereto of the equal protection of the laws. However, counsel facetiously suggest that the legislature in this instance discovered a means of classificstion. But however pungent this suggestion may be this Court will not fail to distinguish the character of this classification from that which counsel insists ought to have been made to render this statute valid. It is true that there is quite a difference between necessity for the inspection of a mine in which a thousand men work and one in which not more than five men work, and it is not conceded that this is not a rational classification. The amendment to section 11e does not in terms exempt mines not having more than five men in them from inspection, and from such other regulations as are provided by this act; but in effect it does provide that such mines may continue to be operated while other mines not complying with the sanitary regulations existing in this State and not paying inspection fees, are subject to be closed by a writ of injunction sued out by the public prosecutor, and giving that amendment its full scope and meaning, it would practically take out of the operation of tne statute all mines in which not more than five men are employed at any one time. It is urged

by the counsel that this amendment operated to so change section 11e as to exempt certain persons who would otherwise be subject to the penalties of the law, from such penalties, leaving others not more guilty of violation than they, still subject thereto, and that by reason thereof such a discrimination is made as amounts to a denial of an equal protection of the laws of those remaining subject to such penalties.

This section of the statute is not in fact a penal section at all, but it simply provides a means of enforcing observance of the sanitary laws for the regulation of mines and the collection of fees by a writ of injunction. Yet, regarding it for the purpose of this discussion as a penal statute and moreover, considering that this provision would render this section obnoxious to the Fourteenth Amendment to the Constitution, yet there are strong, and it seems to me, conclusive reasons why it can not have that effect.

If the act as originally passed by the legislature is a valid act, and the exception whereby mines in which not more than five men are employed at any one time, are taken out of its

operation, is an unconstitusional provision, then an amendment embodying that provision would be absolutely null and void.

> "An unconstitutional act is not law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed."

That being true, this act stands as though section 11e had never been amended.

Yet there is still another reason why the constitutionality of section 11e will have no bearing here. This act, when considered as a whole, is for the purpose of enforcing sanitary regulations in mines. Mine inspectors are appointed for that purpose, whose duty it is to make inspections and see to the carrying into effect of the provisions of the act. Section 11e is simply one of the means provided by the statutes of the State of Illinois for the purpose of enforcing these regulations. Other penal provisions of the various statutes have also been passed for that purpose. Section 11e may be entirely stricken out and yet the act would be a complete act and could be enforced and the

general object and purpose of the act as effectually carried into effect as though section 11e had not been enacted.

It is a well settled doctrine that though part of a statute may be unconstitutional and void, the residue may be constitutional and valid. (See authorities cited in brief.) If, when the unconstitutional portion is stricken out, that which remains is complete in itself and capable of being executed in accordance with the apparent legislative intent, it must be sustained. Applying this rule, it is a matter of wholly immaterial consideration whether section 11e is or is not a valid section. And it is equally as conclusive, upon the authorities cited in the brief, that if section 11e was ever a valid provision, its validity has never been affected by the supposed amendment of 1897. Strike it out and the harmony, symmetry, and potency of the mining act of Illinois would be unimpaired. That which would remain would be as capable of enforcement as though this section had never been designed as a part of the original act.

It is also insisted that the mine inspection act is not an inspection law within the true

meaning of that word and in the sense which is required to make it a proper police regulation. Here is an assumption that in order for this law to be a proper police regulation, it must be an inspection law within the technical meaning of that term. That is not true. Any law which has for its purpose the protection of the lives and health of the citizens of the State is a proper police regulation, whether it involves an inspection in the technical sense or not. This is not an inspection law in the technical sense of that term. Inspection, in its technical sense, means:

> "An examination of certain articles made by law subject to such examination so that they may be declared fit for commerce."

The inspection of mines is not for the purpose of determining the character of the mine as an article of commerce, nor is it for the purpose of determining the character of its product for that purpose. Yet an inspection of a mine will determine its sanitary condition, and will determine whether the provisions of the statutes made for the regulation of mines in this State and the protection of the lives and health of miners, are being complied with. Counsel

argues that a law providing for an inspection, the purpose of which is to determine whether certain statutory provisions are being complied with, so that penalties may be enforced against those in violation of the law, is not a proper inspection law, and the case of *People vs. Compagnie General vs. Transatlantique*, 107 U. S. 59, is cited in support of that doctrine, but that case does not support his contention; nor do we believe that any well considered case can be found to sustain his position. In that case the inspection law before the Court was a law providing for the inspection of alien passengers coming into the State of New York, to determine whether they were criminals, paupers, lunatics, orphans or infirm persons without means or capacity for supporting themselves and subject to become a public charge. The Supreme Court of the United States, considering that question, determined that such a law was not a proper inspection law for the reason that it could not be ascertained whether such persons were paupers, lunatics, infirm persons, etc., by an inspection; and that such regulation is merely denominated an inspection law for the purpose of evading the constitutional provision. It was not sought by that

law to determine, by inspection, whether such persons were guilty of a crime, nor was it held by the Supreme Court in that case that a law providing for an inspection which might incidentally result in the detection of violations of the law, would for that reason be an unconstitutional provision and not a proper inspection law. On the contrary, all inspections under law are for the purpose of ascertaining whether the law is being complied with, and to enforce compliance when necessary.

It is urged with apparent earnestness that this statute is a revenue measure, and counsel submits to the Court a calculation to show that not all the money earned by the district mine inspectors can be legitimately used in the payment of the salaries of mine inspectors.

This position is not correct. The fact that more money will be collected under the provisions of the statute than barely sufficient to pay the expenses of inspection will not give this law the character of a revenue measure. In order to be a revenue measure the object should be to raise money for the use of the public and not to protect the lives and health of the miners; and the latter being its object, the

character of the act is determined thereby, although some money may incidentally fall into the public treasury in the enforcement of the provisions of the act.

But if a revenue measure and not in conflict with some provision of the Federal Constitution, that would not affect the validity of the statute so far as this Court is concerned. No valid objection to it, even as a revenue measure, has been pointed out by counsel, and it is exceedingly doubtful that as a revenue measure it would not be upheld by the Supreme Court of Illinois; and it would certainly be valid as tested by the Federal Constitution.

The amount of fees to be charged is a matter of legislative discretion, and that having been determined by the legislature is conclusive, unless it is manifest that the real purpose is to raise revenue under the guise of police regulation, or to prohibit the exercise of a lawful calling by means of oppressive license fees.

Price vs. The People, 193 Ill., 114.
People vs. Harper, 91 Ill., 357.

In the case *Price vs. The People, supra*, the Supreme Court of Illinois holds that the busi-

ness of employment agents may be taxed for the purposes of revenue; and, upon the reasoning adopted by the court in that case, no distinction is perceived for the application of a different rule to the business of mining coal.

We must conclude that this statute is not one that is capable of being enforced arbitrarily and with discrimination, unequally and unjustly without regard to *legal* discretion, but it is a staute which comes clearly within the general police powers of the State.

Barber vs. Connolly, 113 U. S., 27.
Missouri Pacific Railway vs. Hughes, 115 U. S.. 512.
Minneapolis Railway Company vs. Beckwith, 129 U. S., 27.
Powell vs. Pennsylvania, 127 U. S., 678.
St. Louis & S. F. Ry. vs. Matthews, 165 U. S.. 1.
Jones vs. Brim, 165 U. S., 180.
Davis vs. Mass., 167 U. S., 43.

It applies alike to all persons and things subject to its operation, and although it may operate differently upon those engaged in the business of mining from what it does upon persons engaged in other lines of business, yet for that reason it is not in violation of the Constitution. It is admitted by counsel, however, that

a law of this character is not in violation of the Constitution, if properly framed. We insist that this is such a law. While certain discretionary powers are necessarily left with mine inspectors, those powers are to be used in the exercise of a legal, as distinguished from an arbitrary discretion, and for that reason this statute does not come within the rule laid down in any case cited by counsel for plaintiff in error.

We commend to the careful consideration of the Court the opinions handed down by the Supreme Court of Illinois in the case of *Chicago, Willmington & Vermillion Coal Co. vs. The People*, 181 Ill., 270, and the *Consolidated Coal Company vs. The People*, 186 Ill., 134. The reasons upon which the opinions in those cases are based is a complete answer to every proposition counsel for plaintiff in error has urged to this honorable Court. It is shown by the Court in very clear and forcible language and logic, that the supposed defects in the mine inspection law of this State are such as in the very nature of things must necessarily exist, and that to meet the objections advanced by counsel for plaintiff

in error would be to render the statute absolutely nugatory and defeat entirely the objects of the legislature in its enactment.

We therefore respectfully urge that your honors will affirm the decision of the Supreme Court of Illinois in this case.

Respectfully submitted,

HOWLAND J. HAMLIN,

Attorney General of Illinois.